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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In re Petition of:

DIVERSIFIED COMMUNICATIONS  
THE NEW YORK TIMES COMPANY  
WBRE ASSOCIATES  
PEGASUS BROADCAST TELEVISION, L.P.  
PEGASUS BROADCAST ASSOCIATES, L.P.

MM Docket 93-303

Petition to Amend Section 76.51 of the  
Commission's Rules to Add Hazleton,  
Pennsylvania and Williamsport, Pennsylvania  
as Designated Communities in the  
Wilkes-Barre-Scranton Television Market.

To: Chief, Mass Media Bureau

JOINT COMMENTS

Diversified Communications ("Diversified"), WNEP-TV, Inc. ("WNEP"), WBRE Associates ("WBRE") Pegasus Broadcast Television, L.P. ("Pegasus Television") and Pegasus Broadcast Associates, L.P. ("Pegasus Associates" referred to jointly as "Petitioners"), by their respective counsel and pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM") released December 21, 1993 in this proceeding, hereby jointly submit their comments in support of amending Section 76.51 of the Commission's rules, 47 C.F.R. § 76.51, to change the designation of the "Wilkes-Barre-Scranton, Pennsylvania" television market to the "Wilkes-Barre-Scranton-Hazleton-Williamsport, Pennsylvania" television market, as requested in the "Joint Petition for Rulemaking" ("Petition") filed on August 3, 1993.

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The original Petitioners, Diversified, WNEP<sup>1</sup>, and WBRE, are joined in these comments by Pegasus Television and Pegasus Associates. Pegasus Television is licensee of stations WOLF-TV, Scranton, and WWLF-TV, Hazleton; Pegasus Associates is licensee of station WILF-TV, Williamsport. As noted in the Petition, Diversified is the licensee of station WYOU-TV, Scranton; Times is the licensee of station WNEP-TV, Scranton, and WBRE is the licensee of station WBRE-TV, Wilkes-Barre.

The commercial television stations licensed to the market are entitled to "must carry" status in the cities of Hazleton and Williamsport and in Luzerne and Lycoming Counties in accordance with Section 617 of the Communications Act of 1934, as amended by Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). However, the signals of Petitioners' stations may be considered "distant signals" under Section 111 of the Copyright Act, 17 U.S.C. § 111, in at least some of these areas. Therefore, the Petition requested that the Commission add Hazleton and Williamsport as designated communities to the Wilkes-Barre-Scranton television market by amending Section 76.51 of the Commission's Rules, 47 C.F.R. § 76.51. Such amendment will ensure that the local ADI stations are, in fact, reasonably available for carriage throughout the redefined television market consistent with the ADI marketplace approach adopted in the 1992 Cable Act.

The factors supporting this determination are set forth in detail in the Petition and will not be repeated herein. The addition of Hazleton and Williamsport as designated communities in the market would serve the public interest. The 1992 Cable Act replaces the arbitrary thirty-five and fifty-five mile zone concepts and station coverage contours in defining

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<sup>1</sup> WNEP, a wholly owned subsidiary of The New York Times Company, became the licensee of WNEP subsequent to the issuance of the Commission's Notice. Times was a party to the earlier filings.

the cable-television station carriage relationship with the more realistic ADI market-based standard which recognizes the real world competitive situation within a television market. The ADI defines the geographic area within which television households predominantly view certain local stations, a simple and more reasonable approach. In order to make that ADI concept function as anticipated in the Wilkes-Barre-Scranton television market, the Commission must adjust the market definition to add Hazleton and Williamsport as designated communities. Otherwise, a substantial number of cable subscribers within the market may be unable to view the local stations because potential copyright liability could make their carriage unattractive and prohibitively expensive.

The new cable regulatory scheme relies on the ADI in order to be reflective of the true marketplace conditions. Including Hazleton and Williamsport in the Wilkes-Barre-Scranton television market would put all commercial television stations in the market (including a possible future licensee of the vacant channel allocated to Williamsport) on an equal competitive level, as well as providing cable subscribers throughout the ADI with equal access to commercial television stations in the market. Amendment of Section 76.51 of the Rules to include Hazleton and Williamsport in the Wilkes-Barre-Scranton market will remove any copyright constraints that may otherwise inhibit carriage of the market stations throughout the ADI.<sup>2</sup>

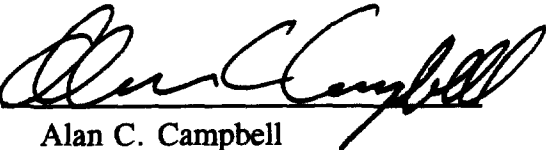
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<sup>2</sup> In note 9 of the NPRM, the Commission notes that parties are free to comment on the degree to which the Petitioners rely upon low-power and translator stations to demonstrate that the stations are genuinely competitive with one another in the combined service area. The Petitioners submit that intra-market competition is well-established without reference to the translator and low power supplements. The stations' respective coverage contours overlap substantially and all but one of the stations (WILF-TV) provide Grade B service to Hazleton, and all but two of the stations (WNEP-TV and WWLF-TV) provide Grade B service to Williamsport (Williamsport lies just outside the Grade B contour of both stations). See "Supplement To Joint Petition For Rulemaking," filed November 5, 1993. The fact that translators and/or low power stations are used to enhance competition and local service in portions of the market

(continued...)

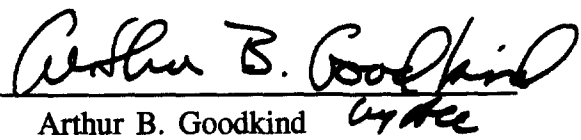
For the reasons set forth herein and in the Petition, Petitioners urge the Commission to amend Section 76.51 of the rules, 47 C.F.R. § 76.51, to redesignate the Wilkes-Barre-Scranton television market as the Wilkes-Barre-Scranton-Hazleton-Williamsport television market.

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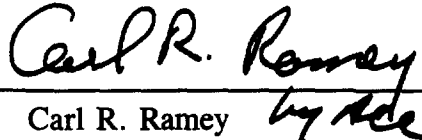
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January 18, 1994

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<sup>2</sup>(...continued)

only bolsters the reasons for adopting the NPRM. This is not a case in which Petitioners are requesting that a market's established area of competition be enlarged on the basis of secondary services.

**CERTIFICATE OF SERVICE**

I, Lorena L. Ferry, hereby certify that on this 18th day of January, 1994, copies of the foregoing "Joint Comments" have been served by hand delivery upon the following:

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